

REMARKS

I. Overview of the Office Action

In the Office Action mailed on February 21, 2008 ("Office Action"), (1) claims 19-21, 23-27, and 29-38 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2003/0004853 A1 ("Ram") and U.S. Publication No. 2003/0189670 A1 ("Kennedy"); (2) claims 22, 28, 39, and 40 were rejected under 35 U.S.C. Ram, Kennedy, U.S. Publication No. 2002/0059129 A1 ("Kemp").

II. Overview of the Claims

Claims 19-40 are currently pending. Claims 19 and 34 are the only independent claims currently pending in this application, and they each include some of the similar novel and non-obvious features, which as discussed below clearly distinguish over the cited art. Claims 19 and 34 were amended to fix an error. The remaining claims depend from either claim 19 or claim 34. Thus, the remarks below demonstrate the patentability of all rejected claims.

III. Rule 1.132 Declaration

Filed herewith is a rule 1.132 declaration of Farley Owens ("FO Dec") to support Applicant's traversal of the rejection under 35 U.S.C. § 103(a). Mr. Owens is currently Executive Vice-President of Product Management and Marketing at Trading Technologies International, Inc. ("TT"). TT is the assignee of the present application.

IV. Claim rejections under 35 U.S.C. § 103(a)

As noted above, independent claims 19 and 34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ram and Kennedy. Applicant traverses the rejection for at least the following reasons.

Applicant's presently claimed invention includes a particular feature for use in an electronic trading screen. See, e.g., the specification at page 8, lines 3-10. Specifically, the presently claimed invention includes a feature that takes complete control of an on-screen cursor away from a trader during a price change on the trading screen, such that the cursor automatically moves with a price level that the cursor is positioned over just prior to the price

change. See, e.g., the specification at page 8, line 3 to page 9, line 2. Applicant's claimed invention addresses a trading screen where a market shift or reposition command causes price levels to move underneath a cursor during a time and/or act of order entry. Id. For example, Applicant's independent claim 19 recites the following features, among others:

...automatically updating the display on the graphical user interface upon receipt of the new market data, by:

updating the plurality of price levels; and

if by updating the plurality of price levels the price level would no longer correspond to the first location, but correspond to a second location, automatically displaying the cursor at the second location so that the cursor continues to correspond to the price level; and

receiving a command from a user input device that sets an order price parameter for a trade order based on the price level even if at the time of selection there was receipt of new market data that causes an update of the display on the graphical user interface such that the price level no longer corresponds to the first location, but corresponds to the second location.

Applicant's independent claim 34 includes similar features, except that claim 34 includes automatically updating the display on the graphical user interface "upon receipt of the command to reposition."

Additionally, claims 19 and 34 both include "receiving a command from a user input device that sets an order price parameter for a trade order...." In contrast, Applicant's dependent claims 20 and 37 call for both setting an order price parameter and sending a trade order to the electronic exchange via a selection of a location from the plurality of locations recited in claims 19 and 34.

Applicant respectfully notes that Ram has already been discussed in this case, and for brevity, that discussion will not be repeated in its entirety here. For the Examiner's convenience, however, Applicant will provide some brief remarks here regarding Ram. Ram is directed to an "interactive graphical front end system for use in trading securities...." (Ram's Abstract). There are at least two ways to enter a trade order using the Ram system. One way to enter a trade order using Ram is to manually fill out a trade ticket. Using a trade ticket, like that shown in Fig. 16 of

Ram, a trader can enter the number of shares and price, among other things, before placing an order to buy or sell the product. Various examples of these trade tickets or forms are shown in at least Figs. 16-19 of Ram, in addition to at least Figs. 12-13.

Another way to enter a trade order using Ram is to drag a quantity from the Position Guide (“PG”) onto a grid with a computer’s pointing device. For example, a PG value is shown in Ram’s Fig. 12 (also shown below), and an order can be entered by dragging and dropping that value onto the grid (¶ [0262] in Ram). Ram also discusses some mechanisms for adjusting the price axis of the grid at ¶ [0253]-[0256].

The Office Action on page 4 acknowledges that Ram “does not disclose automatically displaying the cursor at the second location so that the cursor continues to correspond to the price level,” per Applicant’s independent claims 19 and 34. Applicant agrees with the Office with respect to this point.

Furthermore, Applicant respectfully submits that because Ram does not disclose at least that feature, then Ram can not also disclose the corresponding feature that sets the order price parameter based on *the* price level even though the price level corresponds to a different location upon a price change on the display. Specifically, claim 19 recites “receiving a command from the user input device that sets an order price parameter for a trade order based on the price level even if at the time of selection there was receipt of new market data that causes an update of the display on the graphical user interface such that the price level no longer corresponds to the first location, but corresponds to the second location.” Claim 34 recites “receiving a command from the user input device that sets an order price parameter for a trade order based on the price level even if at the time of selection there was receipt of the command to reposition the plurality of price levels that causes an update of the display on the graphical user interface such that the price level no longer corresponds to the first location, but corresponds to the second location.”

The Office then turns to Kennedy as disclosing automatically displaying the cursor at a second location so that the cursor continues to correspond with a selected object as the background changes, and contends that it would have been obvious to one skilled in the art at the time of the invention to combine Ram and Kennedy to arrive at Applicant’s claimed invention. Kennedy is directed to a system and method for positioning a cursor associated with a dynamic background. Specifically, the Kennedy system relates to cursor positioning in a “video broadcast.” (See, e.g., Kennedy’s “Field of Invention” section).

Applicant traverses the rejection based on the Office's proffered combination of Ram and Kennedy. Without conceding that Kennedy is even within the body of art to which one skilled in the art of the claimed invention would refer, Applicant submits that for a number of reasons the claimed invention would not have been obvious to a person of ordinary skill in the art based on the asserted combination. For example, as discussed in greater detail below and in the accompanying declaration, it would not have been obvious to take complete control of an on-screen cursor, at a time and/or act of order entry, away from a trader during a price change on the display, given the teachings of Ram and Kennedy and the conventional wisdom at the time that a trader must instinctively maintain complete control of the cursor for order entry. E.g., FO Dec at ¶ 2. Moreover, even if Ram and Kennedy were combined as suggested by the Examiner, the combination fails to yield the claimed invention.

One skilled in the art certainly would fail to discern the invention from the combination of Ram and Kennedy. In particular, the independent claims recite "automatically displaying the cursor at the second location so that *the cursor continues to correspond to the price level*," and "set[ting] an order price parameter . . . *based on the price level*" even though the price level corresponds to a different location upon a price change on the display. E.g., Claims 19, 34 (emphasis added). Neither Kennedy nor Ram shows or suggests these claim elements. Thus, even if combined as suggested in the Office Action, the cited references fail to show or suggest the invention as claimed.

Moreover, it is inappropriate to combine Ram and Kennedy as suggested in the Office Action. Adding a feature (e.g., automatic cursor movement) to a trading screen that takes complete control of the cursor away from the trader during a critical time of order entry would have been counter-intuitive and unpredictable to one of ordinary skill in the art at the time of the invention, and would have led to unexpected results. E.g., FO Dec at ¶ 2. Rather, maintaining complete control of the cursor by the trader during the critical time of order entry was the understanding engrained in the minds of the industry. E.g., FO Dec at ¶ 4.

Using Ram as an example, the Ram trading interface is no different in this respect compared to the trading screens that have come before it. E.g., FO Dec at ¶ 4. Indeed, such as discussed above, control of the cursor during the time of order entry according to Ram's trading interface predictably follows the same conventional wisdom that is found in trading screens prior to Applicant's claimed invention, which is that the trader maintains complete control of the

cursor during order entry. E.g., FO Dec at ¶ 4. Ram's two methods of order entry (e.g., an order ticket and a dragging/dropping a PG value onto the grid) require that the trader maintain complete cursor control during the time of order entry. Kennedy also fails to solve this deficiency because it makes no mention whatsoever of cursor control during order entry.

Additionally, the combination as suggested by the Office, contravenes conventional wisdom in the art. Specifically, at the time of the invention, one of ordinary skill in the art would have outright rejected the idea of taking complete cursor control away from the trader during the time of order entry. E.g., FO Dec at ¶ 2. Rather, in attempting to design a trading interface like Ram, one of ordinary skill in the art using common sense would have unquestionably carried over into the new design certain known, predictable attributes that were common to all previous trading screens. E.g., FO Dec at ¶ 2. One such feature of other trading screens at the time of Applicant's claimed invention was that a trader must be given complete control of the on-screen cursor during the time of order entry, because of the criticality of placing a trade order (and/or setting an order price) in an electronic market. E.g., FO Dec at ¶ 2.

It was also known that a high-level of assimilation is already required by the trader to mentally process all sorts of incoming data to make better trade order decisions. E.g., FO Dec at ¶ 3. As such, there was little or no room for intentionally adding features into a trading screen design that can cause even more distraction or disorientation, especially during the critical time of setting an order price and/or sending an order. On the contrary, the focus of design in a trading screen was often to cause less distraction or disorientation to the trader. For example, a trader tracks items like the highest bid price, lowest ask price, last trade price, last trade quantity, and market bids and offers in one or more markets all at once, not to mention monitors risk levels and/or tolerances, outside market influences, and any of a number of other dynamic factors that can impact the market's direction. Thus, without the creativity and insight of the Applicant in the presently claimed invention, one of ordinary skill in the art at the time of invention would have outright rejected intentionally adding a feature that can cause a trader further distraction or disorientation, such as due to a possibility of a complete loss of control of an on-screen cursor during receipt of a command of setting an order parameter, like price, or during receipt of a command that both sets an order price and sends a trade order to the exchange.

There continues to be a very strong incentive for people in the financial trading industry to try any idea that is perceived as even possibly providing a small edge in making money. E.g.,

FO Dec at ¶ 5. Trillions of dollars in value change hands each day through the trading of products, including futures, options, commodities, equities, currencies, etc. Over a span of several decades, all of the industry players, including the exchanges, FCMs (“Future Commission Merchants”), individual traders, trading companies and ISVs (“Internet Service Providers”), have expended considerable resources on research and development to invent any idea that can provide an advantage, because even the smallest advantage could translate into millions of dollars. The result of their endeavor can be viewed in the many designs of trading screens over the years – albeit some trading screen designs have been more successful than others. Some of those trading screens offer something new and different over the last, but none of those trading screens departed from the conventional wisdom that a trader is to maintain complete control of the on-screen cursor during the time of order entry.

Applicant is way ahead of the competition. A year and a half after Applicant filed this application for a patent Cantor Fitzgerald, a well-known corporation in the financial industry, and its inventors filed a provisional application that describes the very same technology (U.S. App. No. 60/653,056). Later, a utility application was filed by the same Cantor Fitzgerald inventors claiming priority to the provisional application (U.S. Publication No. 2007/0271171, entitled, “*Systems and Methods for Providing Dynamic Price Axes*,” to Lutnick et al. and assigned to Cantor Fitzgerald). This utility patent application not only describes the very same technology claimed by Applicant, but Cantor Fitzgerald seeks to claim the technology as their very own. In fact, Lutnick (the Chairman and CEO of Cantor Fitzgerald), Foley, Noviello, and Sweeting all declared under penalty of perjury in a declaration that they believe to be the original, first, and joint inventors of the technology; and that they do not know and do not believe that this invention or discovery was ever known or used in the United States of America. Applicant submits that this is strong evidence of the non-obviousness of Applicant’s claimed invention.

Accordingly, it is not obvious to combine the features discussed in Kennedy, with that of a trading screen for use in electronic trading, so that complete control of the on-screen cursor can be taken from a trader during the time of order entry. E.g., FO Dec at ¶ 6. In the field of electronic trading where the stakes are extremely high, especially during the time of critical order entry, one of ordinary skill in the art, even if assumed to have knowledge of Kennedy, would outright reject the teachings in Kennedy as not applicable for use in order entry. This clear

understanding is also supported by the absolute lack of departure from conventional wisdom of the user maintaining complete control through order entry, even when considering the sheer magnitude of industry-wide effort going into the development of an improved trading interface over the last several decades to the present time. On top of that, this understanding is further supported by the statements made by the inventors at a well-known corporation in the financial industry – Cantor Fitzgerald, who by claiming the very same technology believes that this technology is new and non-obvious. Moreover, even if the combination is made, it fails to show or suggest the claimed invention.

Accordingly, independent claims 19 and 34 are allowable over the art of record, and claims 20-33 and 35-40 are allowable for at least the same reasons that their independent base claims are allowable, in addition to their own separate reasons. As such, Applicant respectfully requests reconsideration and withdrawal of this rejection.

V. Conclusion

All the stated grounds of rejection have been respectfully traversed, accommodated, or rendered moot. Applicant therefore submits that the present application is in condition for allowance in view of the cited art. If the Examiner believes that further dialog would expedite consideration of the application, the Examiner is invited to contact Trading Technologies in-house Patent Counsel Mark Triplett at 312-476-1151.

Respectfully submitted,

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